as any other act or contract, and should be considered voidable in the same manner as his personal acts and contracts are considered voidable." In this he is sufficiently protected in all of his property rights by his right of disaffirmance. On the other hand, the interests of third parties dealing with minors should not be made unnecessarily burdensome by making all of their acts done through agents absolutely void.

It is therefore suggested that our law on the subject of minors' powers and minors' obligations generally would be greatly improved by amending section 33 of the Civil Code. As changed the section should provide that a minor under the age of eighteen cannot directly or by a delegation of power make contracts relating to real property or personal property not in his immediate possession, etc. In all other cases as provided in sections 34 and 35 of the same code, he should be allowed to act directly or through an agent. We feel that the attitude of the courts in other jurisdictions and of our own court before the adoption of the code is preferable to the rule of the legislature. It has been held in this state that where an infant appeared by attorney and not by guardian and judgment was given against him that such judgment was merely voidable and not void.[8]

M. C. L.

ASSAULT AND BATTERY: OPERATION BY PHYSICIAN WITHOUT CONSENT OF PATIENT.—Proceeding from the premise that one of the most fundamental rights of a free citizen is the right to the inviolability of his person, the courts have established the general rule that a physician cannot perform a surgical operation upon the body of a patient unless the act be duly authorized. There seem to be two sets of circumstances, however, from which consent by the patient may be implied: First, in a case of sudden or critical emergency, e. g., where a person has been rendered unconscious in an accident, a physician is justified in giving such medical or surgical treatment as may reasonably be necessary for the preservation of life or limb.[1] Second, if, in the course of an operation to which the patient has consented, the physician discovers conditions not anticipated before the operation was commenced, and which if not removed would endanger the life or health of the patient, he is justified in extending the operation to remove and overcome those conditions.[2] But he is not justified in performing a totally different operation.[3]

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[8] Childs v Lauterman, (1894) 103 Cal. 387, 37 Pac. 382 42 Am. St. Rep. 121.

[1] Pratt v. Davis, (1905) 118 Ill. App. 161, 165; Mohr v. Williams, (1905) 95 Minn. 261, 104 N. W. 12, 1 L. R. A. (N S.) 439, 111 Am. St. Rep. 462, 5 Ann. Cas. 303

[2] Bennan v. Parsonnet, (1912) 83 Atl. 948.

[3] Mohr v Williams, supra; Pratt v. Davis, (1906) 224 Ill. 300, 79 N. E. 562, 7 L. R. A. (N. S.) 609.

In the recent case of *Rolater v. Strain*,[4] it was decided that when the patient has given a restricted or qualified consent, and has prohibited the physician from removing a specified part, such prohibition is binding upon the physician, and no further consent can be implied, though a cure cannot be effected without the removal of that part. In that case a joint in the great toe of a young woman's foot became so infected that it was found necessary to drain it. The woman consented to this operation, but expressly stipulated that no bones should be removed. After the patient was placed under an anaesthetic and an incision was made, it was found that the joint could not be drained, owing to the fact that it was covered with a sesamoid bone. This bone was in an unusual place and its presence could not be ascertained by external examination. The physician, knowing that a cure could not be otherwise effected, removed it. In an action of assault and battery brought by the patient, the physician contended that as a sesamoid bone is not considered as one of the bones of the human anatomy, it was not in the contemplation of the parties when the patient prohibited him from removing any bones from her toe. The jury, however, taking into consideration the expert testimony, found in effect that "bones is bones," and awarded the patient substantial damages. The court held that in face of the specific prohibition by the patient, the doctrine of implied consent could not be introduced. This view is undoubtedly correct. As the patient must be the final arbiter as to whether or not he will take his chances with an operation,[5] he should also be allowed to limit the extent to which the physician may go in performing an operation to which consent has been given.

E. J. S.

CONFLICT OF LAWS: DETERMINATION OF FOREIGN LAW: QUESTION FOR COURT OR JURY.—"The law of a foreign state on a particular subject is a matter of fact to be proven like any other fact."[1] To whom should the proof be addressed, the court or the jury? The text book writers are unanimous in the opinion that it should be addressed to the court.[2] Courts themselves, however, do not follow such a uniform practice. Aside from statutory regulation, the general American rule seems to be that the factum of the foreign law is a question for the jury[3]; while its construction and effect may be

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[4] (Nov. 11, 1913) 137 Pac. 96 (Okl.)

[5] Mohr v. Williams, supra.

[1] People v. Tufts, (Feb. 16, 1914) 47 Cal. Dec. 277, 279-280, 139 Pac. 78.

[2] Thayer, Preliminary Treatise on Evidence, 258; Wigmore on Evidence, sec. 2558; 1 Greenleaf on Evidence, sec. 486; Story, Conflict of Laws, sec. 638; Wharton, Conflict of Laws, pp. 1514, 1515.

[3] Thayer, Preliminary Treatise on Evidence 258; Wharton, Conflict of Laws, sec. 773; Minor, Conflict of Laws, sec. 213.